

Bruce T. Beesley

Honorable Bruce T. Beesley
United States Bankruptcy Judge



Entered on Docket
June 06, 2013

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UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

In re:

AHERN RENTALS, INC.,

Debtor.

Case No.: BK-N-11-53860-BTB
Chapter 11

Confirmation Hearing
Date: June 5, 2013
Time: 9:30 a.m.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING
CONFIRMATION OF DEBTOR'S SECOND AMENDED PLAN OF
REORGANIZATION, AS AMENDED AND MODIFIED**

Ahern Rentals, Inc. ("Debtor"), debtor and debtor-in-possession, having filed the *Debtor's Second Amended Plan of Reorganization* [ECF No. 1796], as amended by the *First Amendment to Debtor's Second Amended Plan of Reorganization* [ECF No. 2084] and modified as set forth in the *Findings of Fact and Conclusions of Law Regarding Confirmation of Debtor's Second Amended Plan of Reorganization as Amended on May 24, 2013* (the "Plan"); and the *Disclosure Statement to Accompany Debtor's Second Amended Plan of Reorganization* [ECF No. 1797], as supplemented by the *Disclosure Statement Supplement to Accompany Debtor's Second Amended Plan of Reorganization* [ECF No. 2086] (together, the "Disclosure Statement");¹ the *Motion for Entry of Order Approving (I) the Adequacy of Disclosure Statement, (II) Procedures for Solicitation, Balloting, Tabulation, and Notices with Respect to the Debtor's Plan of Reorganization, and (III) Related Confirmation Procedures, Deadlines, and Notices* [ECF No. 1593], which was approved by the Bankruptcy Court on March 15, 2013 [ECF No. 1816] (the "Solicitation Procedures Order"); *Debtor's Ex Parte Motion for (i) Conditional Approval of Disclosure Statement Supplement to Accompany Debtor's Second Amended Plan, (ii) Approval of the Plan Support Agreement, and (iii) Establishing Scope, Forms, Procedures, and Deadlines for Revoting and Tabulation of Votes to Accept or Reject the Debtor's Plan from Certain Holders of Class 2 Second Lien Loan Claims* [ECF No. 2087], which was approved by the Bankruptcy Court on May 24, 2013 [ECF No. 2089] (the "Revoting Order"); the *Notice of Filing and Plan Supplement to Debtor's Second Amended Plan of Reorganization* [ECF No. 2092] (the "Plan Supplement"); *Debtor's Memorandum of Law in Support of Confirmation of Debtor's Second Amended Plan of Reorganization, as Amended by the First Amendment to Debtor's Second Amended Plan* [ECF No. 2106] (the "Confirmation Memorandum"); and the *Declaration of Howard Brown in Support of Confirmation of Debtor's Second Amended Plan of Reorganization, as Amended by the First Amendment to Debtor's Second Amended Plan* [ECF

¹ The Plan and Disclosure Statement were also amended by the *Errata to Debtor's Second Amended Plan of Reorganization* [ECF No. 1796] and *Disclosure Statement to Accompany Debtor's Second Amended Plan of Reorganization* [ECF No. 1797] [ECF No. 1824].

No. 2108] (the “Brown Declaration”); and the Bankruptcy Court having held the Confirmation Hearing on June 5, 2013; and after due deliberation, and sufficient cause appearing therefor;

IT HAVING BEEN FOUND AND DETERMINED by this Bankruptcy Court that:

1. Unless otherwise defined herein, all capitalized terms shall have the meanings given such terms in the Plan.

2. On December 22, 2011 (the “Petition Date”), Debtor filed its voluntary petition for relief under Chapter² 11 of the Bankruptcy Code, thereby commencing the above-captioned Chapter 11 Case. Since the Petition Date, Debtor has continued operating its business and managing its property as a debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

3. The Bankruptcy Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. § 1334. Confirmation of the Plan is a core proceeding in which the Bankruptcy Court may enter a Final Order in accordance with 28 U.S.C. § 157(b)(2). Venue of the Chapter 11 Case in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Kurtzman Carson Consultants LLC, Debtor’s claims agent, filed the *Second Amended Certification of Evan Gershbein With Respect to the Tabulation of Votes on Debtor’s Second Amended Plan of Reorganization* [ECF No. 2146] (the “Ballot Summary”) setting forth the results of the balloting on the Plan.

5. This Bankruptcy Court takes judicial notice pursuant to Rule 201 of the Federal Rules of Evidence of the docket of the Chapter 11 Case including, without limitation, all pleadings and other documents filed, all orders entered, and all evidence and arguments made, proffered, or adduced at the hearings held before this Bankruptcy Court during the pendency of this Chapter 11 Case.

...

² All references to “Chapter” and “Section” herein shall be to the “Bankruptcy Code” appearing in Title 11 of the U.S. Code; all references to “Bankruptcy Rule” shall be to the Federal Rules of Bankruptcy Procedure; and all references to “Local Rule” or “LR” shall be to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

Confirmation Requirements

6. The Plan satisfies all of the applicable requirements of Chapter 11 of the Bankruptcy Code.

7. The classification of Claims in Section 3 of the Plan is necessary and reasonable to implement the Plan, and satisfies the requirements Section 1122(a) of the Bankruptcy Code in that each Claim in each particular Class is substantially similar to other Claims in such Class.

8. The separate classification of Class 7 (General Unsecured Claims) from each of the Class 6 subclasses (Personal Injury Claims), the separate classification of each Class 6 subclass from each of the other Class 6 subclasses, and the separate classification of Class 3 (Kubota Claims) from Class 4 (Other Secured Claims), are in compliance with Section 1123(a)(1) and (3) and (b)(6) of the Bankruptcy Code, and are reasonable, in good faith, not unfairly discriminatory, and justified based upon the economic realities of this Chapter 11 Case. As such, the separate classification of Class 7, each of the Class 6 subclasses, Class 3, and Class 4 satisfies the requirements of Section 1122 of the Bankruptcy Code.

9. Section 3 of the Plan adequately and properly identifies and classifies all Claims other than Claims of the kind specified in Sections 507(a)(2), 507(a)(3), or 507(a)(8) of the Bankruptcy Code which are treated in Section 2 of the Plan, thereby satisfying the requirements of Section 1123(a)(1) of the Bankruptcy Code.

10. Section 3 of the Plan adequately and properly identifies the Classes of Claims and Equity Interests which are and are not Impaired. Therefore, the Plan satisfies the requirements of Section 1123(a)(2) of the Bankruptcy Code.

11. Section 3 of the Plan specifies the treatment of each Impaired Class of Claims and thereby satisfies the requirements of Section 1123(a)(3) of the Bankruptcy Code.

12. The Plan provides for the same treatment for each Claim in a particular Class and thereby satisfies the requirements of Section 1123(a)(4) of the Bankruptcy Code.

13. The Plan provides adequate means for its implementation, thereby satisfying Section 1123(a)(5) of the Bankruptcy Code, including, among other things: the continued existence of Reorganized Ahern, the execution and delivery of the Exit Financing Facility

1 Documents, the effectuation of the revesting of assets in Reorganized Ahern, the continuation of
2 post-Effective Date management and operations, and the procedures specified under the Plan for
3 the disbursements to Holders of Allowed Claims.

4 14. In accordance with Section 1123(a)(6) of the Bankruptcy Code, the Reorganized
5 Ahern's Organizational Documents shall prohibit the issuance of non-voting interests to the
6 extent required by Section 1123(a)(6) of the Bankruptcy Code.

7 15. The provisions of the Plan are consistent with the interests of the Holders of
8 Claims and public policy and, therefore, satisfy the requirements of Section 1123(a)(7) of the
9 Bankruptcy Code.

10 16. In accordance with Section 1123(b)(1) of the Bankruptcy Code, Section 3 of the
11 Plan impairs Classes 2, 3, 6A through 6L, 7, and 8 and leaves Unimpaired Classes 1, 4, 5 and 9.

12 17. The Plan constitutes a motion by the Debtor (i) to assume, as of the Effective
13 Date, pursuant to Section 365(a) of the Bankruptcy Code, each Executory Contract and
14 Unexpired Lease to which the Debtor is a party and which is (a) not listed on **Exhibit E** of the
15 Plan Supplement, (b) not otherwise provided for in the Plan, (c) neither assumed, assumed and
16 assigned, nor rejected by separate order prior to the Effective Date, or (d) the subject of a
17 stipulation or other written agreement between the Debtor and the counter-party to a particular
18 Executory Contract or Unexpired Lease, either approved or to be approved by this Bankruptcy
19 Court; and (ii) to reject each Executory Contract and Unexpired Lease to which the Debtor is a
20 party listed on **Exhibit E** of the Plan Supplement. The Debtor is authorized to assume or reject
21 Executory Contracts and Unexpired Leases in accordance with the Plan.

22 18. The Debtor's decision regarding the assumption or rejection of Executory
23 Contracts and Unexpired Leases, as authorized by Section 1123(b)(2) of the Bankruptcy Code
24 and as provided for in Section 5 of the Plan, is a reasonable exercise of sound business judgment
25 and is in the best interests of the Debtor and the Estate. Except to the extent set forth in one or
26 more separate stipulations and corresponding orders entered by the Bankruptcy Court, there are
27 no defaults existing under any assumed Executory Contract and Unexpired Lease to which the
28 Debtor is a party, and any and all Cure amounts are set forth in **Exhibit F** of the Plan

1 Supplement, except as otherwise set forth in a separate stipulation and corresponding order
2 entered by the Bankruptcy Court.

3 19. Pursuant to and in compliance with Sections 1123(b)(3)(A) and (b)(6) of the
4 Bankruptcy Code, with respect to Sections 9.4 (Discharge), 9.5 (Compromise and Settlement),
5 9.6 (Releases), 9.7 (Injunction), and 9.8 (Exculpation) of the Plan, as applicable, the Bankruptcy
6 Court finds and concludes that:

7 a. Section 9.6 is in compliance with and comports with applicable law.

8 b. The discharge, compromise and settlement, release, injunction, and
9 exculpation provisions in Sections 9.4 through 9.8 of the Plan:

10 i. fall within the jurisdiction of this Bankruptcy Court under 28
11 U.S.C. § 1334(a), (b), (d) and (e);

12 ii. are in consideration for the respective support (financial and
13 otherwise) that the Released Parties have provided in connection
14 with the Plan and the Debtor's reorganization;

15 iii. are fair, equitable, and reasonable and are essential means of
16 implementing the Plan pursuant to Section 1123(a)(5) of the
17 Bankruptcy Code;

18 iv. are integral elements of the compromises with Creditors referenced
19 in Section 9.5 of the Plan and the transactions incorporated into the
20 Plan;

21 v. confer a material benefit on, and are in the best interests of, the
22 Debtor, the Estate, and Creditors;

23 vi. are important to the overall objectives of the Plan;

24 vii. are consistent with Sections 105, 510, 1123, 1129, and other
25 applicable provisions of the Bankruptcy Code; and

26 viii. are effective and binding in accordance with their terms.

27 c. The failure to effect the discharge, compromise and settlement, release,
28 exculpatory, and injunctive provisions of the Plan would impair the Debtor's ability to

1 confirm the Plan.

2 20. Pursuant to and in compliance with Sections 1123(b)(3)(A) and (b)(6) of the
3 Bankruptcy Code, with respect to Section 9.5 (Compromise and Settlement), the settlement,
4 compromise and allowance of Claims in Classes 2, 3, 6A through 6L, 7, and 8 are in good faith,
5 fair, equitable, within the range of reasonableness, in the best interests of the Debtor and its
6 Estate, are entered into in good faith, at arms' length, and are appropriate pursuant to Sections
7 1123 of the Bankruptcy Code, including, but not limited to, subsections (b)(3)(A) and (b)(6), the
8 standards applicable to settlements and compromises in bankruptcy pursuant to Rule 9019 of the
9 Federal Rules of Bankruptcy Procedure, and applicable case law.

10 21. The Plan complies with all applicable provisions of the Bankruptcy Code, thereby
11 satisfying the requirements of Section 1129(a)(1) of the Bankruptcy Code, including, but not
12 limited to, the requirements of Sections 1122 and 1123 of the Bankruptcy Code as incorporated
13 therein.

14 22. The Debtor, as proponent of the Plan, has complied with the applicable provisions
15 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and orders of the Bankruptcy
16 Court with respect to the Plan. Good, sufficient and timely notice of the Confirmation Hearing
17 has been given to Holders of Claims and to other parties-in-interest to whom notice is required to
18 be given as required by the Solicitation Procedures Order and the Revoting Order. The
19 solicitation of votes was made in good faith and in compliance with the applicable provisions of
20 the Bankruptcy Code and all other rules, laws and regulations, and such solicitation was
21 conducted after disclosure of "adequate information" as defined in Section 1125 of the
22 Bankruptcy Code. Ballots of Holders of Claims entitled to vote on the Plan were properly
23 solicited and tabulated in accordance with the Solicitation Procedures Order and the Revoting
24 Order.

25 23. As reported in the Ballot Summary, Holders of at least two-thirds (2/3) in amount
26 and more than one-half (1/2) in number of the Claims actually voting in Classes 2, 3, 6E, 6L, 7,
27 and 8 have accepted the Plan. Holders of Claims and Equity Interests in Classes 1, 4, 5 and 9 are
28 not impaired under the Plan, were not entitled to vote to accept or reject the Plan, and are

1 conclusively presumed to have accepted the Plan. As such, the Debtor has complied with Section
2 1129(a)(2) of the Bankruptcy Code, including, but not limited to, the requirements set forth in
3 Sections 1125 and 1126 of the Bankruptcy Code.

4 24. The Plan, the compromises and settlements embodied therein, and the Exit
5 Financing, have been proposed in good faith and not by any means forbidden by law, as
6 evidenced by, among other things, the totality of the circumstances surrounding the formulation
7 of the Plan and the record of this Chapter 11 Case. The Plan provides the greatest opportunity to
8 maximize the value of the Estate, and Debtor has exercised sound and reasonable business
9 judgment through the Plan. The Exit Lenders, who are established and well-regarded in the
10 Debtor's industry, have acted and entered into the Exit Financing Facility Documents in good
11 faith. The Exit Lenders fairly and reasonably negotiated the Exit Financing Facility Documents
12 at arms' length with the Debtor, and the resulting terms of the Exit Financing, including the
13 related fee structures and the Alternative Transaction Fee, are in the best interests of the Estate.
14 As such, the Plan satisfies the requirements of Section 1129(a)(3) of the Bankruptcy Code.

15 25. Any payment made or to be made under the Plan for services or for costs and
16 expenses in, or in connection with, the Chapter 11 Case, or in connection with the Plan and
17 incident to the Chapter 11 Case, including, without limitation, the Exit Financing, has been
18 approved by, or will be subject to the approval of, the Bankruptcy Court as reasonable, thereby
19 satisfying the requirements of Section 1129(a)(4) of the Bankruptcy Code. The payment of
20 \$10.0 Million in Cash to the Noteholder Group, in care of its counsel Bracewell & Giuliani LLP,
21 pursuant to Section 3.4.2(b) of the Plan, is hereby approved and shall be made on the Effective
22 Date and distributed by Bracewell & Giuliani LLP without any further Order of the Bankruptcy
23 Court.

24 26. The Debtor's current officers and current members of its Board of Directors shall
25 serve in their respective capacities through the Effective Date of the Plan. The Debtor has
26 disclosed the identities and compensation of the officers and members of the Board of Directors
27 who will serve after the Effective Date. Therefore, the Debtor has satisfied the requirements of
28 Section 1129(a)(5) of the Bankruptcy Code.

1 27. Section 1129(a)(6) of the Bankruptcy Code is inapplicable to this Chapter 11 Case
2 because the Plan does not contain rate changes for which a governmental regulatory commission
3 has jurisdiction after confirmation.

4 28. The Debtor admitted into evidence the liquidation analysis prepared for the
5 Debtor, which was attached to the Brown Declaration (the "Liquidation Analysis"). After
6 reviewing and considering the evidence and arguments of counsel, the Bankruptcy Court finds
7 that the total liquidation value of the Debtor and the recoveries by Holders of Claims Impaired
8 under the Plan and entitled to recoveries in the event of a liquidation under Chapter 7, is as set
9 forth in the Liquidation Analysis.

10 29. In a Chapter 7 liquidation, the recoveries for all Holders of Claims and Equity
11 Interests would vary, but would not exceed the projected recoveries under the Plan.

12 30. The Plan complies with Section 1129(a)(7) of the Bankruptcy Code in that with
13 respect to Classes 1, 2, 3, 4, 5, 6, 7, 8, and 9, each Holder of an Allowed Claim or Equity Interest
14 will receive and retain under the Plan on account of such Claim property of a value, as of the
15 Effective Date of the Plan, that is not less than the amount that such Holder would so receive or
16 retain if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code on such date.

17 31. In accordance with Section 1129(a)(8) of the Bankruptcy Code, Classes 2, 3, 6E,
18 6L, 7, and 8 have voted to accept the Plan in accordance with Section 1126(c) of the Bankruptcy
19 Code. Classes 1, 4, 5, and 9 under the Plan are unimpaired and therefore are deemed to have
20 accepted the Plan pursuant to Section 1126(f) of the Bankruptcy Code. Classes 6B, 6C, and 6H
21 did not vote on the Plan, Classes 6F, 6G, 6I, and 6K have no members and thus no votes can be
22 received, and Classes 6A, 6D, and 6K voted to reject the Plan (the "Rejecting Classes," together
23 with Classes 6B, 6C, and 6H, the "Non-Accepting Classes"). Accordingly, the Non-Accepting
24 Classes are deemed to have voted to reject the Plan pursuant to Section 1126(g) of the
25 Bankruptcy Code. Because the Non-Accepting Classes have not accepted the Plan, the
26 requirements of Section 1129(a)(8) of the Bankruptcy Code have not been met, thereby requiring
27 application of Section 1129(b) of the Bankruptcy Code. As is more fully set forth hereinafter,
28 the Plan satisfies Section 1129(b) of the Bankruptcy Code with respect to the Non-Accepting

1 Classes.

2 32. The Plan's treatment of Allowed Administrative Claims, Allowed Priority Tax
3 Claims, and other unclassified priority claims as set forth in Section 507(a) of the Bankruptcy
4 Code satisfies the requirements set forth in Section 1129(a)(9) of the Bankruptcy Code because
5 the Plan provides for the payment in full of each Holder of an Allowed Administrative Claim,
6 Allowed Professional Fee Claim, Allowed Priority Tax Claim, and DIP Loan Claim pursuant to
7 Section 2 of the Plan.

8 33. The Plan complies with Section 1129(a)(10) of the Bankruptcy Code in that (A)
9 Classes 2, 3, 6E, 6L, 7, and 8 (all Impaired Classes of Claims under the Plan) voted to accept the
10 Plan without including acceptance by any insider.

11 34. To demonstrate the feasibility of the Plan, the Brown Declaration included
12 financial projections relating to the projected operating results, cash flow, and financial position
13 of the Reorganized Ahern upon the Effective Date of the Plan through December 31, 2017 (the
14 "Financial Projections"). The Financial Projections demonstrate that the Debtor is capable of
15 satisfying the obligations proposed under the Plan. Further, the Debtor has secured Exit
16 Financing in the aggregate amount of up to \$745 million, along with an Equity Contribution of
17 \$5 million, which amounts, together with the Debtor's Cash and Cash equivalents, are more than
18 sufficient to satisfy all Allowed Claims under the Plan, including all Administrative Claims,
19 Professional Fee Claims, and Priority Tax Claims. As such, the Debtor has demonstrated that it
20 is capable of meeting all Cash payments under the Plan, and that the Plan is otherwise feasible in
21 accordance with Section 1129(a)(11) of the Bankruptcy Code.

22 35. As more fully set forth in the Financial Projections, the Plan complies with
23 Section 1129(a)(11) of the Bankruptcy Code in that confirmation will not likely be followed by
24 the liquidation or the need for further financial reorganization of the Debtor. The Plan offers a
25 reasonable prospect of success and there exists a reasonable probability that the provisions of the
26 Plan can be performed. Therefore, the Plan satisfies the feasibility test set forth in Section
27 1129(a)(11) of the Bankruptcy Code.

28 36. The Plan complies with Section 1129(a)(12) of the Bankruptcy Code in that the

1 Plan provides for the payment of all fees under 28 U.S.C. § 1930 as of the Effective Date or as
2 they come due after such time.

3 37. Section 1129(a)(13) of the Bankruptcy Code is satisfied as there are no retiree
4 benefits, as the term is defined in Section 1114 of the Bankruptcy Code, affected under the Plan.

5 38. The Debtor is not required to pay any domestic support obligation, and thus
6 Section 1129(a)(14) of the Bankruptcy Code is inapplicable.

7 39. The Debtor is not an individual, and thus Section 1129(a)(15) of the Bankruptcy
8 Code is inapplicable.

9 40. The Debtor is a moneyed, business, and commercial entity, and thus Section
10 1129(a)(16) of the Bankruptcy Code is inapplicable.

11 41. The requirements of Section 1129(b) of the Bankruptcy Code are satisfied as all
12 of the applicable requirements of Section 1129(a) of the Bankruptcy Code other than subsection
13 (a)(8) are met with respect to the Plan, and the Plan does not discriminate unfairly and is fair and
14 equitable with respect to the Non-Accepting Classes, which are the Impaired Classes under the
15 Plan that did not accept the Plan. The Plan provides for payment of 100% of the Allowed Claims
16 in these Unsecured Classes, with the same rates of interest being paid to Holders of General
17 Unsecured Claims in Class 7.

18 42. The Holders of Claims in the Non-Accepting Classes will receive, on account of
19 such Claims, property of a value, as of the Effective Date, at least equal to the allowed amount of
20 such Claims in accordance with Section 1129(b) of the Bankruptcy Code.

21 43. The principal purpose of the Plan is not the avoidance of taxes or avoidance of the
22 requirements of Section 5 of the Securities Act of 1933. No governmental unit has requested
23 that the Bankruptcy Court deny confirmation on such basis. Therefore, the Plan satisfies the
24 requirements of Section 1129(d) of the Bankruptcy Code.

25 44. The documentation of transactions to implement the Plan set forth in the Plan
26 Supplement is reasonable and appropriate, and execution of documents substantially in
27 accordance with the forms attached to the Plan Supplement, modified as necessary to incorporate
28 all the Plan amendments in paragraphs 47 through 56, is in the best interest of the Estate and all

1 parties-in-interest.

2 45. Based upon the record before the Bankruptcy Court, the Debtor and the Released
3 Parties have acted in good faith within the meaning of Section 1125(e) of the Bankruptcy Code
4 in compliance with all their respective activities relating to the Chapter 11 Case, and the
5 negotiation and pursuit of confirmation of the Plan. Therefore, they are entitled to the
6 protections afforded by Section 1125(e) of the Bankruptcy Code and the discharge, compromise
7 and settlement, release, exculpatory and injunctive provisions set forth in Section 9 of the Plan.

8 46. Unless otherwise provided in the Plan, all injunctions or stays in effect in the
9 Chapter 11 Case pursuant to Sections 105 and 362 of the Bankruptcy Code or any order of the
10 Bankruptcy Court, and existing on the Confirmation Date (excluding any injunctions or stays
11 contained in the Plan or the Confirmation Order) shall remain in full force and effect until the
12 Effective Date. All injunctions or stays contained in the Plan or the Confirmation Order shall
13 remain in full force and effect in accordance with their terms.

14 **Plan Modifications**

15 47. In Section 1.1.60, the words “Term Loan Claims and Second Lien Loan Claims”
16 shall be inserted after the words “DIP Loan Claims.”

17 48. In Section 1.1.97, the words “, as amended, modified, supplemented, or restated
18 from time to time” shall be added at the end of the sentence.

19 49. In Section 1.1.109, in clause (i), the “sixty (60) days” shall be replaced by “one
20 hundred twenty (120) days.”

21 50. In Section 1.1.100.7, the amount of “\$415,000,000” shall be replaced with
22 “\$420,000,000.”

23 51. Section 3.4.2(b) shall have the following added at the end of the first paragraph:
24 “All such Distributions (other than the \$10.0 Million in Cash referenced herein and, except as
25 provided below, the Contingent Value Rights) shall be made to the Second Lien Indenture
26 Trustee, who will make the Distributions to the Holders of the Allowed Second Lien Loan
27 Claims. The Cash portion of such Distributions shall be made to the Second Lien Indenture
28 Trustee, who will make the Cash Distribution to the Holders of the Allowed Second Lien Loan

1 Claims. The Contingent Value Rights shall be distributed directly by the Debtor, or as otherwise
 2 agreed to by the Debtor and the Second Lien Indenture Trustee, which Distribution shall be
 3 through the facilities of DTC, if commercially reasonable.”

4 52. The second bullet in Section 3.4.6(b) pertaining to Classes 6A to 6E shall be
 5 replaced in its entirety as follows: “In the event that the Holder of an Allowed Personal Injury
 6 Claim is not paid in full by the SIR and the policy proceeds, the Holder of such Allowed
 7 Personal Injury Claim shall receive, for the portion of the Allowed Personal Injury Claim in
 8 excess of the SIR and the policy proceeds, Cash payments, that shall accrue interest at the
 9 Federal Judgment Rate for the period from the Petition Date through the Effective Date and after
 10 the Effective Date at the rate of five percent (5%) per annum or such other interest rate as the
 11 Bankruptcy Court determines at the Confirmation Hearing or otherwise. Such excess amount
 12 shall be paid either (i) in equal monthly installments over the period of time that commences on
 13 the later of the Effective Date and the date that the Personal Injury Claim becomes an Allowed
 14 Personal Injury Claim and ends one (1) year following the Effective Date, or (ii) in the event the
 15 Personal Injury Claim becomes an Allowed Personal Injury Claim more than one (1) year after
 16 the Effective Date, on the first Business Day after the Personal Injury Claim becomes an
 17 Allowed Personal Injury Claim (and the allowance of the Claim has not been stayed). In all
 18 events, such payments shall be in full satisfaction, settlement, release and discharge of and in
 19 exchange for the Holder’s Allowed Personal Injury Claim.”

20 53. The second bullet in Section 3.4.6(b) pertaining to Classes 6F to 6L shall be
 21 replaced in its entirety as follows: “In the event that the Holder of an Allowed Personal Injury
 22 Claim is not paid in full by the Deductible and the policy proceeds, the Holder of such Allowed
 23 Personal Injury Claim shall receive, for the portion of the Allowed Personal Injury Claim in
 24 excess of the Deductible and the policy proceeds, Cash payments, that shall accrue interest at the
 25 Federal Judgment Rate for the period from the Petition Date through the Effective Date and after
 26 the Effective Date at the rate of five percent (5%) per annum or such other interest rate as the
 27 Bankruptcy Court determines at the Confirmation Hearing or otherwise. Such excess amount
 28 shall be paid either (i) in equal monthly installments over the period of time that commences on

the later of the Effective Date and the date that the Personal Injury Claim becomes an Allowed Personal Injury Claim and ends one (1) year following the Effective Date, or (ii) in the event the Personal Injury Claim becomes an Allowed Personal Injury Claim more than one (1) year after the Effective Date, on the first Business Day after the Personal Injury Claim becomes an Allowed Personal Injury Claim (and the allowance of the Claim has not been stayed). In all events, such payments shall be in full satisfaction, settlement, release and discharge of and in exchange for the Holder's Allowed Personal Injury Claim."

54. Section 4.6.5 shall be replaced in its entirety with the following: "The DIP Loan Documents, the Term Loan Documents and Second Lien Loan Documents shall continue in effect solely for the purposes of: (i) allowing the DIP Loan Agents, Term Loan Agents, and Second Lien Agents, to receive the Plan Distributions required to be made to them or at their direction pursuant to the Plan and/or the DIP Loan Documents, the Term Loan Documents and the Second Lien Loan Documents and to distribute such Distributions in accordance therewith, (ii) allowing and preserving the rights of the Second Lien Agents to (a) make Distributions in satisfaction of Allowed Second Lien Loan Claims and (b) exercise any applicable charging liens against any such Distributions to obtain compensation and reimbursement for any fees, expenses (including attorney's fees) or indemnity to the extent permitted by the Second Lien Loan Documents, and (iii) allowing and preserving the rights of the DIP Loan Agents and the DIP Lenders to seek and obtain reimbursement for any expenses (including attorneys' fees) or indemnity to the extent permitted by the DIP Loan Documents. From and after the Effective Date, the Second Lien Agents will have no duties or obligations under the Second Lien Loan Documents other than to make Distributions."

55. In the second and the third sentence of Section 7.1, the word "Pre-Petition" shall be inserted before the words "Claims Objection Deadline."

56. In Section 9.8, the words ", **THE SECOND LIEN AGENTS, SOLELY IN THEIR CAPACITY AS SECOND LIEN COLLATERAL AGENT AND SECOND LIEN INDENTURE TRUSTEE FOR THE SECOND LIEN LOAN NOTES**" shall be inserted after the words "**THE NOTEHOLDER GROUP, SOLELY IN THEIR CAPACITY AS THE**"

1 **HOLDERS OF SECOND LIEN LOAN CLAIMS”** both times such words are used in the
2 Section.

3 57. The above-listed modifications in paragraphs 47 through 56, and, to the extent
4 that any other provisions in these Findings and Conclusions could be construed as modifications
5 to the Plan, do not materially adversely affect or change the treatment of any Claims against or
6 Equity Interests in the Debtor. Accordingly, such modifications would not require additional
7 disclosure under Section 1125 of the Bankruptcy Code or the resolicitation of acceptances or
8 rejections under Section 1126 of the Bankruptcy Code, nor do they require that Holders of
9 Claims against or Equity Interests in the Debtor be afforded an opportunity to change previously
10 cast acceptances or rejections of the Plan as filed with the Bankruptcy Court. Disclosure of the
11 above-listed modifications on the record at the Confirmation Hearing constitutes due and
12 sufficient notice thereof under the circumstances of the Chapter 11 Case. As such, the above-
13 listed modifications are approved as necessary and appropriate, and the Plan is so modified. All
14 other modifications and amendments to the Plan are subject to Section 11 of the Plan.

15 **Other Findings and Conclusions**

16 58. The Exit Financing is an essential element of the Plan, and entry into the Exit
17 Financing Facility Documents is in the best interest of the Debtor, the Estate and all Holders of
18 Claims and Equity Interests. The Debtor has exercised reasonable business judgment in
19 determining to enter into the Exit Financing Facility Documents and has provided sufficient and
20 adequate notice of the material terms of the Exit Financing. The Debtor has further exercised
21 reasonable business judgment in determining to increase the principal amount of the notes issued
22 under the Notes Indenture from \$415,000,000 to \$420,000,000. The terms and conditions of the
23 Exit Financing, including the security interests and Liens granted thereunder, are fair and
24 reasonable, and the Exit Financing has been negotiated in good faith and at arms' length. The
25 Exit Financing is a critical component of the Plan because without it, the Debtor would not have
26 sufficient funding to pay the Allowed Claims of Creditors and would not be able to reorganize.
27 The Debtor and Reorganized Ahern are authorized, without further approval of the Bankruptcy
28

1 Court or any other party, to execute and deliver all agreements, documents, instruments and
2 certificates relating thereto and incur and perform their obligations thereunder.

3 59. The Debtor and its Professionals and advisors have acted in good faith with
4 respect to the solicitation of votes to accept or reject Plan, and the Debtor and its Professionals
5 and advisors are entitled to the protection under Section 1125(e) of the Bankruptcy Code.

6 60. The Bankruptcy Court's retention of jurisdiction as set forth in Section 10.1 of the
7 Plan comports with the parameters contained in 28 U.S.C. § 157.

8 61. Notice of all proceedings regarding or relating to confirmation of the Plan,
9 including without limitation, the Confirmation Hearing, was adequate under the circumstances
10 and complied with applicable provisions of the Bankruptcy Code and the Federal Rules of
11 Bankruptcy Procedure.

12 62. These Findings and Conclusions, and all findings put forth on the record by the
13 Bankruptcy Court orally at the Confirmation Hearing, which are incorporated herein by this
14 reference, shall constitute findings of fact and conclusions of law pursuant to Rule 52 of the
15 Federal Rules of Civil Procedure, as made applicable pursuant to Rules 7052 and 9014 of the
16 Federal Rules of Bankruptcy Procedure. To the extent any finding of fact shall be determined to
17 be a conclusion of law, it shall be so deemed, and vice versa.

18 63. The failure specifically to include or reference any particular provision of the Plan
19 in these Findings and Conclusions shall not diminish or impair the effectiveness of such
20 provision, it being the intent of the Bankruptcy Court that the Plan be confirmed in its entirety,
21 except as modified as set forth in paragraphs 47 through 56, above.

22 **IT IS SO ORDERED.**

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LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

- ☐ The court waived the requirement of approval under LR 9021(b)(1).
- ☐ No party appeared at the hearing or filed an objection to the motion.
- ☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated above.
- ☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objection to the form or content of the order.

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